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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 JORGE CUADRAS-BARRAZA, an individual;  
14 CARLOS FLORES-PADILLA, an individual,

15 Plaintiffs,

16 vs.

17 GARY S. STRINGER, an individual; LINKS  
18 LOGISTICS, LLC; DOES I-X; and ROE  
19 CORPORATIONS I-X, inclusive,

20 Defendants.

CASE NO.: 2:13-cv-01627-GMN-VCF

**DEFENDANTS' MOTION TO DISMISS  
PLAINTIFFS' NEGLIGENT  
ENTRUSTMENT CLAIM PURSUANT TO  
F.R.C.P. 12(b)(6)**

**AND ORDER**

21  
22 Defendants move this Honorable Court to dismiss Plaintiffs' Negligent Entrustment claim  
23 pursuant F.R.C.P. 12(b)(6).

24 This Motion is made and based on the pleadings and papers on file herein and the points and  
25 authorities attached hereto.

26 ///

27 ///

28 ///

I.

Points & Authorities

A. Motion to Dismiss Standard

Although the Court must draw all inferences in favor of the non-moving party, once it appears beyond a reasonable doubt that the plaintiff could prove no set of facts which entitle him to relief, a Motion to dismiss pursuant to F.R.C.P. 12(b)(6) should be granted. Rodriguez v. Panayiotou, 314 F.3d 979, 983 (9th Cir. 2002). F.R.C.P. 12(b)(6) motions may be granted as to portions of a complaint. Decker v. Massey-Ferguson, Ltd., 681 F.2d 111, 115 (2d Cir.1982).

**B. As a matter of law, because Defendants have admitted that Mr. Stringer was acting in the course and scope of his employment with Links Logistics, LLC; Plaintiffs' Negligent Entrustment claim must be dismissed.**

The law in the District of Nevada is when a motor carrier admits its driver was acting in the course and scope of his employment at the time of a motor vehicle accident, the direct claim of Negligent Entrustment is not allowed. Adele v. Dunn, 2013 WL 1314944, at 2 (D.Nev. 2013).

This lawsuit is the result of a motor vehicle accident between Mr. Flores-Padilla and Mr. Stringer. At the time of the motor vehicle accident, Mr. Stringer was acting in the course and scope of his employment with Link Logistics, LLC.

On July 22, 2013, Plaintiffs filed a complaint in state court alleging the following causes of action:

- 1) Negligence;
- 2) Negligence per se; and
- 3) Negligent Entrustment.

There is no punitive damages claim. (Exhibit A).

After removing the case to this court, on October 14, 2013, Defendants answered the complaint and admitted that Mr. Stringer was acting within the course and scope of his employment with Links Logistics at the time of the motor vehicle accident. (Docket No. 9). (Exhibit B).

Therefore, because Defendants have admitted course and scope, Plaintiffs' Negligent Entrustment and Negligent Hiring causes of action must now be dismissed.

**II.**

**Conclusion**

Based on the above, Defendants move this Court for an order:

1. Dismissing Plaintiffs' Third Cause of Action: Negligent Entrustment; and
2. Striking Plaintiffs' Third Cause of Action from the Complaint.

DATED this 31 day of October, 2013.

STEPHENSON & DICKINSON, P.C.

By: 

BRUCE SCOTT DICKINSON, ESQ.

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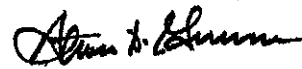
**ORDER**

**IT IS SO ORDERED** this 15th day of November, 2013.

  
Gloria M. Navarro  
United States District Judge

**EXHIBIT A**

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CLERK OF THE COURT

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10 Attorney for Plaintiffs

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 JORGE CUADRAS-BARRAZA, an individual;  
14 CARLOS FLORES-PADILLA, an individual,

15 Plaintiff,

16 vs.

17 GARY S. STRINGER, an individual; LINKS  
18 LOGISTICS, LLC; DOES I - X; and ROE  
19 CORPORATIONS I - X, inclusive,

20 Defendants.

CASE NO. A - 13 - 685639 - C

DEPT. NO. XXX I I

**COMPLAINT**

21 COMES NOW Plaintiffs JORGE CUADRAS-BARRAZA and CARLOS FLORES-PADILLA,  
22 by and through their attorney of record, JOSHUA R. LUCHERINI, ESQ., and complains against  
23 Defendants as follows:

**GENERAL ALLEGATIONS**

- 24 1. That Plaintiff JORGE CUADRAS-BARRAZA is, and at all times mentioned herein, was,  
25 a resident of the County of Clark, State of Nevada.
- 26 2. That Plaintiff CARLOS FLORES-PADILLA is, and at all times mentioned herein, was, a  
27 resident of the County of Clark, State of Nevada.
- 28 3. That Defendant GARY S. STRINGER is, and at all times mentioned herein, was, a  
resident of Utah.
4. That Defendant LINKS LOGISTICS, LLC is, and at all times mentioned herein, was, a

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Colorado limited liability company doing business in County of Clark; State of Nevada.

5. That the true names and capacities of the Defendants designated herein as Doe or Roe Corporations are presently unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names. When the true names and capacities of these defendants are ascertained, Plaintiffs will amend this Complaint accordingly.
6. That at all times pertinent, Defendants were agents, servants, employees or joint venturers of every other Defendant herein, and at all times mentioned herein were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named Defendants.
7. That Plaintiff JORGE CUADRAS-BARRAZA is, and at all times mentioned herein, was the owner and operator of a 2003 Chrysler PT Cruiser.
8. That Defendant GARY S. STRINGER was at all times mentioned herein the operator of a 2011 Freightliner T700 (hereinafter referred to as the "Vehicle").
8. That Defendant LINKS LOGISTICS, LLC was at all times mentioned herein the owner of the Vehicle.
9. That on August 6, 2012, in Clark County, Nevada, Defendant GARY S. STRINGER — while in the course and scope of his employment with Defendant LINKS LOGISTICS, LLC — negligently failed to reduce speed and use due care, thereby causing a crash with Plaintiff.
10. That as a direct and proximate result of the negligence of Defendant GARY S. STRINGER, Plaintiffs sustained injuries to their shoulders, back, bodily limbs, organs and systems, all or some of which condition may be permanent and disabling, and all to Plaintiffs' damage in a sum in excess of \$10,000 per Plaintiff.

1 11. That as a direct and proximate result of the negligence of Defendant GARY S.  
2 STRINGER, Plaintiffs received medical and other treatment for the aforementioned  
3 injuries, and that said services, care, and treatment are continuing and shall continue in  
4 the future, all to the damage of Plaintiffs.  
5

6 12. That as a direct and proximate result of the negligence of Defendant GARY S.  
7 STRINGER, Plaintiffs have been required to, and have limited occupational and  
8 recreational activities, which have caused and shall continue to cause Plaintiffs loss of  
9 earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment  
10 of life, in a presently unascertainable amount.  
11

12 13. That as a direct and proximate result of the negligence of Defendant GARY S.  
13 STRINGER, Plaintiff's vehicle was damaged and Plaintiff lost the use of that vehicle.  
14

15 14. That as a direct and proximate result of the aforementioned negligent of all Defendants,  
16 Plaintiffs have been required to engage the services of an attorney, incurring attorney's  
17 fees and costs to bring this action.  
18

19 **FIRST CAUSE OF ACTION**

20 15. Plaintiffs incorporate paragraphs 1 through 14 of the Complaint as though said  
21 paragraphs were fully set forth herein.

22 16. Defendant GARY S. STRINGER owed Plaintiffs a duty of care to operate the Vehicle in  
23 a reasonable and safe manner. Defendant GARY S. STRINGER breached that duty of  
24 care by striking Plaintiff's vehicle on the roadway. As a direct and proximate result of  
25 the negligence of Defendant GARY S. STRINGER, Plaintiffs have been damaged in an  
26 amount in excess of \$10,000.00, per Plaintiff.  
27

28 **SECOND CAUSE OF ACTION**

17. Plaintiffs incorporate paragraphs 1 through 16 of the Complaint as though said

1 paragraphs were fully set forth herein.

- 2 18. The acts of Defendant GARY S. STRINGER as described herein violated the traffic laws  
3 of the State of Nevada and Clark County, constituting negligence per se, and Plaintiffs  
4 have been damaged as a direct and proximate result thereof in an amount in excess of  
5 \$10,000.00, per Plaintiff.  
6

7 **THIRD CAUSE OF ACTION**

- 8 19. Plaintiffs incorporates paragraphs 1 through 18 of the Complaint as though said  
9 paragraphs were fully set forth herein.  
10  
11 20. Defendant LINKS LOGISTICS, LLC was the owner, or had custody and control of the  
12 Vehicle. That Defendant LINKS LOGISTICS, LLC did entrust the Vehicle to the control  
13 of Defendant GARY S. STRINGER.  
14  
15 21. That Defendant GARY S. STRINGER was incompetent, inexperienced, or reckless  
16 in the operation of the Vehicle.  
17  
18 22. That Defendant LINKS LOGISTICS, LLC actually knew or, by the exercise of  
19 Reasonable care, should have known that Defendant GARY S. STRINGER was  
20 incompetent, inexperienced, or reckless in the operation of motor vehicles.  
21  
22 23. That Plaintiffs were injured as a proximate consequence of the negligence and  
23 incompetence of Defendant GARY S. STRINGER.  
24  
25 24. That as a direct and proximate cause of the negligent entrustment of the Vehicle  
26 by Defendant LINKS LOGISTICS, LLC to Defendant GARY S. STRINGER, Plaintiffs  
27 have been damaged in an amount in excess of \$10,000.00, per Plaintiff.  
28

WHEREFORE, Plaintiffs expressly reserving the right to amend this complaint prior to or at the  
time of trial of this action, to insert those items of damage not yet fully ascertainable, prays judgment  
against all Defendants, and each of them, as follows:



1. For general damages sustained by Plaintiffs in an amount in excess of \$10,000.00, per plaintiff;
2. For special damages sustained by Plaintiffs in an amount in excess of \$10,000.00, per plaintiff;
3. For property damages sustained by Plaintiffs;
4. For reasonable attorney's fees and costs;
5. For interest at the statutory rate; and
6. For such other relief as the Court deems just and proper.

DATED July 22, 2013.

**JOSHUA R. LUCHERINI, CHTD**

\_\_\_\_/s/ JOSHUA R. LUCHERINI\_\_\_\_

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3175 South Eastern Avenue  
Las Vegas, NV 89169

**EXHIBIT B**

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CASE NO.: 2:13-cv-01627-GMN-VCF

**ANSWER TO COMPLAINT AND JURY  
DEMAND**

21  
22 Defendants, GARY S. STRINGER and LINKS LOGISTRICS, LLC answer the Complaint as  
23 follows:

24 Defendants deny each and every allegation contained in the Complaint on file herein except  
25 as to the responses hereinafter set forth.

26 1-2. Defendants are without knowledge or information sufficient to form a belief as to the  
27 truth of the assertions contained in these Paragraphs and therefore deny the same.  
28

1           3-4.    The allegations of this Paragraph are admitted.

2           5.    Defendants are without knowledge or information sufficient to form a belief as to the  
3 truth of the assertions contained in this Paragraph and therefore deny the same.

4           6.    Defendants admit that at the time of the August 6, 2012 motor vehicle accident, Mr.  
5 Stringer was an employee of Links Logistics, LLC and acting in the course and scope of his  
6 employment. Defendants deny the remaining allegations of this paragraph.

7           7.    Defendants are without knowledge or information sufficient to form a belief as to the  
8 truth of the assertions contained in this Paragraph and therefore deny the same.

9           8.    Defendants admit that Mr. Stringer was operating a 2011 Freightliner Tractor/trailer at  
10 the time of the August 6, 2012 motor vehicle accident. Defendants deny the remaining allegations of  
11 this paragraph.

12           8.    Defendants deny each and every allegation contained in this Paragraph.

13           9.    Defendants admit that Mr. Stringer was in the course and scope of his employment  
14 with Links Logistics, LLC at the time of the August 6, 2012 motor vehicle accident. Defendants  
15 deny the remaining allegations of this paragraph.

16           10-14. Defendants deny each and every allegation contained in these Paragraphs.

17  
18  
19  
20                   **FIRST CAUSE OF ACTION**

21           15.   Defendants incorporate by reference their answers to all prior Paragraphs as though  
22 fully set forth herein.

23           16.   Defendants object to Plaintiffs' characterization of their duty and allege that their  
24 duties are set by law. Defendants deny the remaining allegations of this paragraph.

25  
26                   **SECOND CAUSE OF ACTION**

27           17.   Defendants incorporate by reference their answers to all prior Paragraphs as though  
28 fully set forth herein.



